

Fairbrother & Osman

Arbitration under Family Law Act 1975

Heard: December 11th 2018

Decision and award: December 19th 2018

Arbitrator: The Hon Peter Rose AM QC

This arbitration proceeded in the context of pending proceedings for property settlement in the Federal Circuit Court.

The parties had been in a de facto relationship for 10 years. They were in their 60s. There were no children of the relationship. The female respondent had a teenage daughter living with her. The primary issues were:-

- Whether the applicant's pre-cohabitation personal property, including artworks, should be viewed as a separate pool from the balance of the parties' property.
- The weight to be given to the respective financial and non-financial contributions, including those of homemaker.
- The weight to be given to the relevant s. 90SF(3) matters.

The applicant, at the commencement of cohabitation, made an initial financial contribution of nearly \$300,000 in addition to his artworks. The respondent made negligible initial financial contributions at that time. The applicant's funds were invested in a succession of properties, providing a home for the parties and the respondent's daughter. Each of the parties earned income which were applied to living expenses and liabilities. Some years later, the respondent received an inheritance that went to

discharge the parties' mortgage and and a substantial gift from her mother to fund renovations to assist in giving her a place to live with the parties.

The arbitrator adopted a two pools approach treating the applicant's art and other pre-cohabitation personal property as a sole contribution.

The parties' respective contributions to the 2nd pool of property, which was the net sale proceeds of the jointly owned home, were assessed as 60% in favour of the applicant and 40% in favour of the respondent.

In the circumstances of the case, no adjustments were warranted on the basis of s.90SF(3) matters.

The Award and Reasons were given 8 days after the Arbitration hearing.